

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 91-10983-MWV
Chapter 7

R & R Associates of Hampton,
Debtor

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MEMORANDUM OPINION

The Court has before it the final fee application of D'Agnese, Keeler & Company, PLLC , dated July 21, 2006, seeking original fees in the amount of \$34,205 and expenses of \$2.98. The original application was objected to by the creditor, Birch Street Recovery Corporation, and a limited objection was filed by the United States Trustee. At a hearing held on September 5, 2006, the Court approved, as a partial amount, \$10,000 in fees and the \$2.98 in expenses. The Court ordered that the applicant file a more detailed narrative supporting its fee application, which narrative was filed on September 12, 2006, and objected to by Birch Street Recovery Corporation on September 25, 2006. As a result of this last objection, the applicant filed a supplemental additional narrative, which included exhibits thereto. The Court held a second hearing on the application on January 9, 2007, and took the issue under advisement.

JURISDICTION

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy

Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

DISCUSSION

It is important to note that the applicant seeks payment for its work as an expert hired by special counsel and not as a professional hired to provide accounting services in general for the bankruptcy estate. Under these circumstances, the Court believes that approval of the applicant’s retention was not necessary. In re Johns-Manville Corp., 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986).

There still remains the question of whether the applicant’s time entries are related to its position as an expert as opposed to its status as the accountant for the trustee in the related case of In re Gaudette. The Court has thoroughly reviewed the supplemental narratives and exhibits provided by the applicant. As a result of a review by the trustee in the Gaudette case, the applicant’s fees were reduced in that case by \$23,622. These fees are now included in the application before this Court. Exhibit 1 to the supplemental additional narrative shows the trustee’s audit with check marks indicating the Gaudette fees and x’s indicating the R & R fees. These fees marked with an x are the same as now being objected to by the Birch Street Recovery Corporation. The Court will rely on the review by the trustee in the Gaudette case and find that these time entries relate to the case before the Court. Having made these findings, the Court allows the applicant the balance of its fee request in the amount of \$24,205.

CONCLUSION

This opinion constitutes the Court’s findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 25th day of January, 2007, at Manchester, New Hampshire.

/s/ Mark W. Vaughn
Mark W. Vaughn
Chief Judge